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Attorneys for Plaintiff Oomph Innovations LLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA**

OOMPH INNOVATIONS LLC,

Plaintiff,

v.

SHENZHEN BOLSESIC
ELECTRONICS CO. LTD.,

GUANGZHOU WELLTOP
ELECTRONIC CO. LTD.,

and

UKLISS ELECTRIC APPLIANCE CO.,
LTD.,

Defendants.

Case No.

COMPLAINT FOR:

**PATENT INFRINGEMENT
(35 U.S.C. § 271) AND**

**COPYRIGHT INFRINGEMENT
(17 U.S.C. § 101)**

1 Plaintiff Oomph Innovations LLC (“Oomph”), for its Complaint against
2 Defendants Shenzhen Bolesic Electronic Co. Ltd, Guangzhou WellTop Electronic
3 Co. Ltd and UKLISS Electric Appliance Co., Ltd (collectively, “Defendants”),
4 alleges as follows:

5 **I. INTRODUCTION**

6 1. This case is for patent infringement and copyright infringement.

7 **II. JURISDICTION AND VENUE**

8 2. The causes of action in this Complaint arise under the Patent Act,
9 Title, 35 U.S.C. § 101 *et seq* and the Copyright Act, 17 U.S.C. § 101 *et seq*.

10 3. This Court has federal question jurisdiction over the subject matter of
11 this action pursuant to 28 U.S.C. §§ 1331 and 1338.

12 4. Venue is proper in this Court pursuant 28 U.S.C. § 1391 since
13 Defendants are foreign entities who are engaged in infringing activities and are
14 causing harm within the district by advertising, offering to sell and/or selling
15 infringing products to consumers in California, including through e-commerce
16 stores that are accessible in California and operating under Merchant or Seller IDs.

17 **III. THE PARTIES**

18 5. Plaintiff Oomph is a limited liability company organized under the
19 laws of California, with its principal place of business at 21 Columbus Ave, Suite
20 233, San Francisco, CA 94111.

21 6. Upon information and belief, Defendant Shenzhen Bolesic Electronic
22 Co. Ltd (“Shenzhen Bolesic”) is a Chinese limited company doing business at 5F,
23 No.6, East Zone of Shangxue Sci-Tech. Park, Bantian St., Longgang Dist.
24 Shenzhen, Guangdong, China. Upon information and belief, Bolesic is doing
25 business as Bolesic Beauty and/or UKLISS.

26 7. Upon information and belief, Guangzhou WellTop Electronic Co. Ltd
27 (“WellTop Electronic”) is a Chinese limited company doing business at No. 11-
28 0218, No. 385 Gongyedadao Middle, Haizhu District, Guangzhou, China. Upon

information and belief, WellTop Electronic is doing business as WellTop.

8. Upon information and belief, UKLISS Electric Appliance Co., Ltd. (“UKLISS Electric”) is a Chinese limited company doing business at the addresses of Shenzhen Bolesic, WellTop Electronic, or elsewhere in China. Upon information and belief, UKLISS Electric is doing business as UKLISS.

9. Upon information and/or belief, Defendants, and each of them, are agents, subsidiaries or related entities of the other, are co-conspirators in the commissions of the wrongful acts and omissions alleged herein, aid and abet those wrongful acts and omissions, and/or are *alter egos* of the other, at least for purposes of avoiding fraud if their separate identities were recognized and upheld. Accordingly, Defendants, and each of them, are vicariously liable for the wrongful acts and omissions of the others.

IV. GENERAL ALLEGATIONS

A. PLAINTIFF’S REVOLUTIONARY “VOLOOM” HAIR VOLUMIZER

10. Plaintiff is the creator of the revolutionary hair volumizer VOLOOM.



11. VOLOOM is designed to add enhanced structure and volume to hair through the use of two heated, opposed and interlocking ceramic-coated plates which seal the hair cuticle and protect it from damage.

12. When used in the under-layers of hair, VOLOOM creates “volume pockets” that lift and separate the individual layers up and away from the scalp.

13. Unlike flat irons that are pulled through the ends of hair (most prone to damage), VOLOOM is designed to be used on the hair near the scalp that is rich in natural protective oils. VOLOOM therefore removes the need for excess mousses,

1 gels or sprays that can weigh hair down and leave it looking flat, dull and lifeless.
2 Since the volume is heat-locked into the hair the “VOLOOM look” can last for
3 several days at a time.

4 14. Oomph markets and sells the VOLOOM product through its website,
5 www.voloom.com. The VOLOOM product sells for a retail price of \$103.99 to
6 \$129.99 depending on the retail outlet and other circumstances. The website
7 provides extensive content, including product information, instructions for use,
8 videos demonstrations, hints and tips, FAQs and customer reviews.

9 15. Oomph also sells the VOLOOM product through major merchandisers
10 and online retailers, including Amazon and Wal-Mart.

11 16. VOLOOM has achieved enormous success and received an
12 overwhelming amount of unsolicited, third-party media attention. For example,
13 VOLOOM has been offered for sale, featured in, or appeared on the websites of:
14 The Today Show, the Huffington Post, Reader’s Digest, Elle, InStyle, The Doctors,
15 Christabelle’s Closet, The Makeup Examiner, Allure, Fashion Scoops, HSN and
16 Modern Salon, among others.

17 **B. PLAINTIFF’S PATENT RIGHTS**

18 17. On September 23, 2014, the United States Patent and Trademark
19 Office duly and legally issued U.S. Patent No. 8,839,802 (“the ‘802 Patent”),
20 entitled “Hair Volumizer Device That Employs Individual Teeth Without Leaving
21 A Visible Pattern.” A true and correct copy of the ‘802 Patent is attached as
22 Exhibit A.

23 18. Oomph is the sole owner of right and title to the ‘802 Patent.

24 19. Oomph marks the packaging and/or inserts of the commercial
25 embodiments of the ‘802 Patent, and affixes the website www.voloom.com, which
26 in turn, lists the ‘802 Patent number in compliance with the marking requirements
27 of 35 U.S.C. § 287.
28

C. PLAINTIFF’S COPYRIGHTS

20. Plaintiff has created original works of authorship, including literary and graphical content which are used in the promotion and sale of VOLOOM.

21. Plaintiff has developed common law copyrights in these works, and has complied, or is complying, with the requirements for federal registration under 17 U.S.C. 101, *et seq.*

22. Oomph is the owner of the literary work entitled “Vooloom Hair Volumizing Iron,” Copyright Application Serial Number, 1-6873712050, a true and correct copy of which is attached as Exhibit B. This work is used in connection with promotional materials for VOLOOM.

23. Oomph is the owner of the literary work entitled “Vooloom Hair Volumizing Iron,” Copyright Application Serial Number, 1-6873712006, a true and correct copy of which is attached as Exhibit C. This work is used in connection with instructions for VOLOOM.

24. Oomph is the owner of the literary work entitled “Vooloom Hair Breakthrough Hair Volumizing Technology, Copyright Application Serial Number: 6873711961, a true and correct copy of which is attached as Exhibit D. This work is used as instructions for the operation of VOLOOM.

25. The images in the “Vooloom Hair Volumizing Iron” instructions appearing in Exhibit C and Exhibit D are also the subject of Copyright Application Serial Number 1-690050577 and Copyright Application Serial Number 1-689952971, respectively.

26. All of the aforementioned Copyright Applications Serial Numbers and associated works are referred to collectively herein as the “Copyrighted Works.”

D. DEFENDANTS’ UNLAWFUL AND INFRINGING ACTIVITIES

27. Defendants have engaged, and are engaging in, reckless, blatant and repeated infringement of Plaintiff’s intellectual property rights.

28. UKLISS Electric’s website www.ukliss.com offers for sale and sells a

product virtually identical to VOLOOM referred to as “Hair Volumizing Iron Flat Iron” (“UKLISS Website”). A true and correct screenshot of the UKLISS Webpage offering this product for sale is attached as Exhibit E. The product is offered for a sale price of \$44.00. Ex. E.

29. The UKLISS “Hair Volumizing Iron Flat Iron” contains all of the elements of at least claim 1 of the ‘802 Patent (hereinafter “Accused Product”).

30. Claim 1 of the ‘802 Patent is directed to a device for volumizing hair. The Accused Product is called a “hair volumizing [iron] flat iron.”

31. The device of claim 1 recites “a first arm comprising a first interlocking plate” and “a second arm comprising a second interlocking plate.” The Accused Product has two arms, both of which contain an interlocking plate. Ex. E.



32. The device of claim 1 recites “at least one heating element associated with any of said first interlocking plate and said second interlocking plate.” The Accused Product contains control buttons on the top of the device (for heating the interlocking plates) and a digital temperature display. Ex. E. The UKLISS Webpage also describes the temperature ranges of the “heating plate.” *Id.*

33. The device of claim 1 recites “a pivot positioned between said first arm and said second arm and arranged to allow relative movement of the interlocking plates between an interlocked position and a non-interlocked position.” The arms of the Accused Products are connected with a pivot and the product is shown in both the locked and unlocked position. Ex. E.



1 34. The device of claim 1 recites “first and second interlocking plates each
2 comprising a two dimensional array of outwardly projecting individual teeth.” The
3 Accused Products contains a two dimensional array of outwardly projecting
4 individual teeth on plates which interlock (as shown in the closed position). Ex. E.

5 35. The device of claim 1 recites “wherein the array of outwardly
6 projecting individual teeth of the first interlocking plate is interlockingly
7 complementary to the array of outwardly projecting individual teeth of the second
8 interlocking plate.” The teeth of the two plates in the Accused Product lock in a
9 complimentary fashion (as shown in the closed position). Ex. E.

10 36. The device of claim 1 recites “wherein each individual tooth comprises
11 a flat top surface.” The teeth of the Accused Product have a flat top surface. Ex. E.

12 37. The device of claim 1 recites “wherein the two dimensional array of
13 individual teeth comprises a checkerboard pattern.” The two dimensional array of
14 individual teeth of the Accused Product have a checkerboard pattern. Ex. E.

15 38. Product reviews appearing on the UKLISS Website demonstrate a
16 misunderstanding among the consuming public that the Accused Product is an
17 equally available and comparable, but less expensive version of VOLOOM. For
18 example, one customer claims “I have fine, thin, straight hair. I’ve tried many root-
19 boosting. This item works wonders! It heats up quickly, takes only a few minutes
20 to volumizing my hair, It also cheaper than voloom.” Another customer claims
21 “This dasign (sic, design) is different for the voloom, it is cheaper than voloom, but
22 the function is the same as voloom.” Ex. E.

23 39. The UKLISS Website perpetuates this myth, in part, by attributing the
24 design of the Accused Product and the exclusive rights therein to UKLISS itself by
25 referring to the “[p]atent pending plate design.” Ex. E.

26 40. The UKLISS Website attributes the site content to UKLISS Electric,
27 however, the federal trademark registration for “UKLISS” is assigned to Shenzen
28 Bolesic. A true and correct copy of the registration is attached as Exhibit F.

1 41. The UKLISS Website also refers to the availability of the Accused
2 Product through Amazon and AliExpress (a/k/a Alibaba). Ex. E. The product is
3 sold through these online retailers ranging from \$22.50 to \$44.79. Screenshots of
4 the Amazon and Alibaba pages where the UKLISS Hair Volumizing Iron Flat Irons
5 are offered for sale (and can be purchased) are attached as Exhibit G and Exhibit H,
6 respectively.

7 42. Certain Accused Product offered through Amazon reflects the provider
8 as “ukliss.” Ex. G. Another reflects the name “YokPollar” which, on information
9 and belief, is supplied by one or more of the Defendants. Plaintiff’s genuine and
10 patented products (also offered through Amazon) appear below the Accused
11 Products under the words “Sponsored products related to this item” and “Customers
12 who bought this items also bought.” Searches of “VOLOOM,” “hair volumizer
13 iron” and variants thereof provide results for both the Accused Product and
14 Plaintiff’s genuine patented product. The customer reviews of the Accused Product
15 attribute the product features, benefits and performance to the Defendants.

16 43. The Accused Product offered through Alibaba reflects the provider as
17 Shenzhen Bolesic (adjacent to the name “Bolesic Beauty”). Ex. H. The Alibaba
18 webpage also features an instructional video containing the legend “WellTop,”
19 wherein the names “WellTop,” “UKLISS,” and “Bolesic Beauty” repeatedly appear
20 together (accounting for and associating all three Defendants). The Alibaba
21 website also includes a “Company Profile” tab which features a video overview of
22 Shenzhen Bolesic that describes WellTop as a “subsidiary.”

23 44. The UKLISS Website contains descriptions of the Accused Products
24 that were copied directly from one or more of Plaintiff’s Copyrighted Works.

25 45. For example, the Accused Product descriptions claims it (i) “is a
26 revolutionary new kind of hair iron that is specifically designed to add lasting
27 volume to” short to medium length, layered or fine hair; (ii) “creates hidden volume
28 pockets that lift the top layers up and away from the scalp” ... [b]y lifting and

1 separating individual hairs”; (iii) “designed to be used only on the hair near the
2 scalp that is rich in natural protective oils – your own natural heat protection. It is
3 never pulled through the hair or used on the ends of hair most prone to damage”;
4 (iv) “has protective ceramic-coated plates, as well as ionic technology that helps
5 seal the hair cuticle and protect it from damage. You’ll find that you need to
6 shampoo, color, and heat-style your hair less often.” Ex. E. This content is the
7 same as, or substantially similar to, Plaintiff’s Copyrighted Works. Ex. B.

8 46. Similar statements infringing one or more of Plaintiff’s Copyrighted
9 Works appear on the Amazon website under the headers “Product description” and
10 “About the Product.” In addition to the statements noted above, the Accused
11 Product description claims (i) it “gives the appearance of greater hair volume to
12 short to medium length hair and finer hair;” (ii) “eliminates the need for costly
13 blowouts and hair styling products such as volumizing sprays, gels and mousses
14 that weigh hair down”; (iii) “[o]ur hair iron has alternating beveled platforms that
15 create volume pockets in the under layers of hair”; (iv) [d]esigned specifically for
16 your short to medium length hairstyles to give you lasting hair volume, so you can
17 extend the amount of time between shampoos and colorings.” Ex. G. This content
18 is the same as, or substantially similar to, Plaintiff’s Copyrighted Works. Ex. B.

19 47. Comparable statements to those set forth above are made on the
20 Alibaba website which are the same as, or substantially similar to, Plaintiff’s
21 Copyrighted Works. Ex. H.

22 48. A competitive purchase of the Accused Product was made from the
23 UKLISS Website. True and correct photographs of the Accused Product ordered
24 and received (including User Manual) are attached as Exhibit I. The User Manual
25 contains content and images that are the same as, or substantially similar to, one or
26 more of Plaintiff’s Copyrighted Works, including the text of the instructions and
27 images intended to demonstrate the use of the product. Exs. C, D and Ex. I.

28 49. A second competitive purchase of the Accused Product was made,

1 which, on information and belief, was provided by WellTop. True and correct
2 photographs of the Accused Product ordered and received are attached as Exhibit J.

3 **F. PLAINTIFF’S EFFORTS TO STOP THE INFRINGING ACTIVITIES**

4 50. Plaintiff has made repeated efforts to address the infringing activities.

5 51. In May 2018, for example, Oomph’s counsel sent a letter to Shenzhen
6 Bolesic and UKLISS Electric—*translated into Chinese*—demanding that the
7 infringement stop after prior email notifications had failed to elicit a response. A
8 true and correct copy of this correspondence is attached as Exhibit K.

9 52. In August 2018, unnamed individuals with an email address reflecting
10 “WELLTOP” responded to Mr. Schwartz. A true and correct copy of the
11 correspondence is attached as Exhibit L. With respect to the allegations of
12 infringement of the ‘802 Patent, the purported WellTop representative enumerated
13 meaningless differences between VOLOOM and the Accused Product, including
14 color, general appearance, minor structural differences and missing functional
15 features. Ex. L. None of these distinctions are patently significant to the claimed
16 subject matter. The email terminates with the words “ukliss beauty.”

17 **E. DISCOVERY OF DEFENDANTS’ FALSE CERTIFICATIONS**

18 53. After receiving “WELLTOP’s” August 2018 response to Oomph’s
19 letter, Oomph tendered this matter to patent counsel to investigate the instant action
20 against Defendants and service through the Hague Convention. In this process,
21 Oomph’s counsel discovered Defendants’ false safety certifications.

22 54. There are recognized safety standards for electronic consumer products
23 sold in the United States. Testing under and compliance with these safety standards
24 protect consumers from defective and dangerous products, including electronic
25 shorts that can cause burns and fires. Compliance with these standards enables
26 manufacturers to advertise their electronic products as safe and effective for their
27 intended use as corroborated with published marks on product labeling.

28 55. For example, the ETL Listed Mark (“ETL”) is proof that an electronic

1 product has been independently tested and meets the applicable published standard.
 2 The ETL mark serves as proof of compliance with North American safety
 3 standards, and it is relied upon by consumers when purchasing electronic products
 4 for use at home, including in this case for hair and near one's face.

5 56. Plaintiff has authorization to use the ETL mark in connection with the
 6 VOLOOM Product. A true and correct copy of this authorization is attached as
 7 Exhibit M. Plaintiff marks its VOLOOM product with the ETL mark to advise the
 8 public that it has undergone testing and complies with the safety standards. Ex. M.

9 57. To compete with Plaintiff, Defendants likewise represent to the public
 10 that the Accused Products have achieved certifications for compliance and safety,
 11 including ETL, UL and others. The purported certifications are presented on the
 12 UKLISS Website and the Alibaba website. *See* Exs. E and H.

13 58. However, upon analysis of the Accused Products for this proceeding, it
 14 was discovered that they do not bear the marks associated with these certifications
 15 (e.g., "ETL" or "UL"). *See* Exs. I and J. This resulted in further inquiry and
 16 discovery that Defendants' display the same certifications in connection with
 17 multiple different products and the images are of such bad quality that they cannot
 18 even be deciphered. Exs. E and H.

19 59. Accordingly, on information and belief, the Accused Products are not
 20 certified under ETL, UL or other comparable U.S. safety and compliance standard,
 21 but are inferior in quality.

22 **V. CAUSES OF ACTION**

23 **COUNT I**

24 **PATENT INFRINGEMENT UNDER 35 U.S.C. § 271**

25 **(Against All Defendants)**

26 60. Plaintiff repeats and realleges the allegations in paragraphs 1 to 59
 27 above as if fully set forth herein.

28 61. Plaintiff is the owner of the '802 Patent.

servants, directors, and employees, and all individuals in active concert or participation with each, from directly or indirectly infringing the Copyrighted Works of Plaintiff in any manner, and from publishing, selling, marketing or otherwise disposing of any copies of the Copyrighted Works;

9. Award Plaintiff damages to account for all gains, profits and advantages derived by Defendants from their infringement of the Copyrighted Works or such damages as to the Court shall appear proper within the provisions of the copyright statutes;

10. Award pre-judgment interest on the judgment;

11. Award costs and attorneys' fees; and

12. Such other and further relief as this Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a trial by jury on all issues so triable as a matter of right.

Dated: September 11, 2018

POLSINELLI LLP



By: Todd M. Malynn, Esq.

Attorneys for Plaintiff